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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,882	06/06/2006	Akira Dangami	062519	7402
38834 7590 04/14/2010 WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP 1250 CONNECTICUT AVENUE, NW SUITE 700 WASHINGTON, DC 20036				
EXAMINER				
BLADES, JOHN A				
ART UNIT		PAPER NUMBER		
1791				
NOTIFICATION DATE		DELIVERY MODE		
04/14/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentmail@whda.com

Office Action Summary

Application No.

10/581,882

Applicant(s)

DANGAMI ET AL.

Examiner

JOHN BLADES

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date 02/09/10
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-7 are pending as amended on 12/22/09.

Response to Amendment

1. This final action is a response to the amendment filed on December 22, 2009. Claims 1-2 have been amended as a result of the previous non-final action. Rejections of claims 1-4 have been reapplied due to these amendments. Claims 5-7 have been added.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claims 1-7** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As it is currently written, the added limitation in lines 11-12 of amended claim 1 is interpreted as encompassing a broader scope than that of Applicants' invention. The phrase "*such that the distance between the label held by the label sticking unit and a surface of the adherend to be stuck with the label is detected*" seems to suggest measurement of a distance at all times, including when the

contact member is not in contact with anything; this does not appear to be part of Applicants' invention (and calls to mind the distance detection flaws noted in the prior art by Applicants). Examiner believes this added limitation is improper and should be rewritten.

4. It is also noted that the new amendment to claim 2 seems a little hazy: it appears that the *contact member* (46) changes its position (rather than the space maintaining device) when the contact member comes into contact with a surface. Also, the new claims/amendments should generally be scanned to eliminate typos (e.g. claim 7: "...in accordance [] pressure on said roller...") and to ensure clear and definite language is used in setting forth the working apparatus.

Claim Rejections - 35 USC § 103

5. **Claims 1-3** are rejected under 35 U.S.C. 103(a) as being unpatentable over Szewczyk *et al.*, US 5,250,138. This reference teaches a label sticking unit that moves toward/away from an adherend, and a space maintaining device mounted on the label sticking unit, which changes position when it contacts a face of the adherend, triggering a sensor when a desired distance is reached and sending a signal to stop the movement of the apparatus (throughout, e.g. [Col. 2, 12-44]. This reference does have a label sticking unit that moves relative to its mounting plate (72), and this plate, in addition to being moveable on multiple supports (74), is of course capable of being held stationary [FIG. 3]. This reference does not expressly disclose *two separate mounting plates for the label supply & sticking unit*; however, these two elements are mounted on

decidedly distinct areas of shaped mounting plate 72 (see figure), and the regions could potentially be considered "first & second mounting plates." It is further noted that Applicants' own mounting plates 32 & 15 seem to be mounted fixedly on some complete apparatus (not shown) and would likely be physically connected just as the regions of Szewczyk's mounting plate 72 are. Regardless, it has been held that the mere separation of the plate taught by the prior art into two distinct parts is well within the realm of ordinary skill, and would have been obvious; see MPEP 2144.04(V)C.

6. With regard to **claims 2-3**, Szewczyk does not expressly disclose the use of a "single" sensor, but multiple sensors [Col. 5, 14-22]. However, they are adjacent (see FIG. 3) and simple devices, acting in a "single" capacity and it would have been obvious to one of ordinary skill in the art at the time of the instant invention to design them as a "single" part, to slightly reduce the overall complexity of the apparatus.

7. **Claim 4** is rejected under 35 U.S.C. 103(a) as being unpatentable over Szewczyk *et al.*, US 5,250,138 in view of Suzuki *et al.*, JP 08-034420. Szewczyk does not expressly disclose a *roller disposed on the contact member*; however, Suzuki does teach a roller (18) that changes position as it travels against the surfaces of adherends which are delivered along a conveyor (see claims, [FIGS. 1-5]). It would have been obvious to one of ordinary skill in the art at the time of the instant invention to combine the roller of Suzuki with the contact member of Szewczyk, to provide a means which contacts conveyed adherends with the ability to travel freely across them, even at higher delivery speeds [0006].

8. **Claims 5-6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Szewczyk *et al.*, US 5,250,138 in view of Applicant's admitted prior art discussed in paragraph [0002] of the original specification. The teachings of Szewczyk have been detailed previously, and although this reference does not expressly disclose controlled-distance label application by *blowing air*, this is admittedly a conventional equivalent to the "predetermined stroke" controlled-distance label application apparatus of Szewczyk, as stated in paragraph [0002] by Applicant, and it would have been obvious to one of ordinary skill in the art at the time of the instant invention to combine the teachings of AAPA with the teachings of Szewczyk to provide an equivalent label application stroke.
9. With regard to **claim 6**, Szewczyk also teaches an embodiment wherein the driving unit uses a pneumatic cylinder (96). This reference does not expressly discuss *the air supply sources*, however, it would certainly have been obvious to one of ordinary skill in the art to select the appropriate sources to power each of the varied movements/functions of such an apparatus (especially considering the multiple degrees and dimensions of movement taught in this reference, as well as any air-assisted label release or retention).

Allowable Subject Matter

10. **Claim 7** would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action, and to include all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not teach or suggest a labeler that features *a space-maintaining device, having a contact member comprising a roller mounted on an L-shaped arm, which moves pivotally in accordance with pressure on said roller and is spring-biased into the detection path of a single sensor* in combination with the other instantly claimed features. This limitation is present in dependent claim 7, and would render it and any associated dependent claims allowable. The closest prior art teaches labelers having other constructions of spring-biased, contact detection members such as *Szewczyk et al.*, US 5,250,138 (also see *Warmann*, US 4,518,450, *Schluter*, US 3,238,080), but not the unique apparatus of the instant application.

Response to Arguments

12. Applicant's arguments, see response filed December 22, 2009, with respect to the rejections of claims 1-4 have been fully considered and are not persuasive. The amendments to Claim 1 do not appear to be substantial enough to patentably distinguish this claim over the prior art; this has been addressed in the rejection above.

13. With regard to the previous obviousness rejections of dependent claims 2-3, the "single sensor" of Applicants' invention that detects a position change of a spring-biased contact member is indeed a multi-piece light-emitting and light-receiving element having several opposing faces and an additional physical member which moves across them (see paragraph [0024] of original specification). It is not entirely clear what the modifier "single" was intended to include or exclude, but the cited contact member sensor setup

of Szewczyk (124,126) does operate in the same manner as the sensor of Applicants' invention, and could potentially even be viewed as an anticipatory teaching, depending on how one interprets "single sensor" in light of the specification. Szewczyk also teaches that any number of conventional sensor types would be equally suited for detecting displacement of the contact member, and their design would be well within the realm of ordinary skill [Col. 5, 14-22]. With regard to claim 4, the roller of Suzuki is not intended to be bodily incorporated into the Szewczyk reference, but to provide an example of a combination of teachings: wherein these labeler contact members should mate well with the surfaces they contact & push against, the design substitution or combination of a skid plate (i.e. Szewczyk) with a roller is simple enough for one of ordinary skill for any number of reasons, such as to engage more smoothly with adherends on a conveyor, as in Suzuki. In a broad sense, the interchangeability of skids/rollers/wheels is generally common sense, unless a more detailed/non-obvious structure is claimed (e.g., claim 7).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN BLADES whose telephone number is (571)270-7661. The examiner can normally be reached on M-Th (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katarzyna Wyrozebski can be reached on (571)272-1127. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/J.B./
Patent Examiner

/KHANH NGUYEN/
Primary Examiner, Art Unit 1791